



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] DECISION
[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 01, 2015, under Wis. Admin. Code §HA 3.03 (1);, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 07, 2015, by telephone.

The issue for determination is whether the Division correctly determined that the petitioner was ineligible for funeral and cemetery aid because she was not in a qualifying category.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. Petitioner died on April 29, 2015. [REDACTED] [REDACTED] [REDACTED] Inc., contacted the WFCAP on April 30, 2015, and was told that petitioner was eligible for WFCAP funding.

3. Petitioner was not eligible for WFCAP because he did not receive Medical Assistance (MA) at the time of his death that would have provided him with eligibility.
4. The funeral home's request for payment was denied. A notice denying eligibility was sent to the [REDACTED]; the notice stated that an appeal could be filed with the Division of Hearings and Appeals but did not mandate a time limit for appealing.

DISCUSSION

Wisconsin law requires county agencies to pay a portion of the cemetery expenses and funeral and burial expenses of indigent recipients of AFDC, W-2 benefits, Supplemental Security Income (SSI), or medical assistance under certain circumstances. Wis. Stat., §49.785(1). If the total cemetery expenses do not exceed \$3,500 the county agency pays the actual cost of those expenses up to \$1,000; if the total funeral and burial expenses do not exceed \$3,500, the county agency pays the actual cost of those expenses up to \$1,500. In addition, if there are unusual circumstances in the funeral that give rise to additional expenses not within the allowable costs, the department may reimburse the county for those additional expenses. Wis. Stat., §49.785(2).

The program policy is found in the WFCAP Manual, available over the internet at <http://www.emhandbooks.wi.gov/wfcap/fcap.htm>. The Manual, at §1.1, makes clear that the decedent must have been eligible for Wisconsin Works (W-2), MA, or an MA waiver program on the date of his death. Petitioner's representative testified that he had been informed that the petitioner was eligible, and that he and petitioner's family proceeded based upon that information.

Petitioner's representative argued at the hearing that the funeral home should be paid the full amount requested because petitioner's family relied on information provided by respondent's representative. That may be true (and the respondent did not contest this assertion, except to indicated that her office does provide "potential" benefit information), but the Division of Hearings and Appeals is limited in its authority in a case such as this. The Division of Hearings and Appeals does not have legal authority to provide a remedy based upon reliance; it must follow the law unless the law allows exceptions.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief based upon his reliance on incorrect information provided by the respondent. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. An Administrative Law Judge must rule on what is correct, which may be at odds with what is fair.

The Wis. Stat., §49.785 provides for WFCAP eligibility only if the decedent was a recipient of certain benefits. As petitioner was not such a recipient, under state law he was not eligible for WFCAP. As a Department Administrative Law Judge, I must conclude that he was ineligible for the benefit.

CONCLUSIONS OF LAW

Petitioner was ineligible for WFCAP assistance because he was not a recipient of a required government aid when he died, and the Division of Hearings and Appeals cannot order eligibility because an agency employee erroneously informed the funeral home that he was eligible.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.



REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

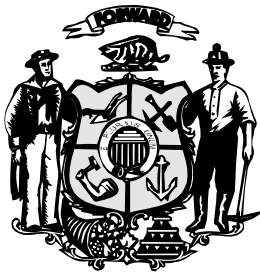
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of August, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 18, 2015.

Division of Health Care Access and Accountability
Wisconsin Funeral and Cemetery Aids Program - DHS